

REMARKS

Claims 1, 11, 12, and 22-26 are pending in this application.

Applicant has amended claims 1, 11, 12, 22, and 23, has canceled claims 3-10 and 14-21 (claims 2 and 13 were previously canceled), and has added new claims 24-26. These changes do not introduce any new matter.

Cancellation of Non-Elected Species

Of the claims canceled herein, claims 4-10 and 15-21 are directed toward non-elected species. Applicant reserves the right to pursue non-elected claims 4-10 and 15-21 in one or more timely filed divisional applications.

Rejection Under 35 U.S.C. § 102

Applicant respectfully requests reconsideration of the rejection of claims 1, 3, 11, 12, 14, and 22 under 35 U.S.C. § 102(b) as being anticipated by *Yamaguchi* (US 6,023,524) (as noted above, claims 3 and 14 have been canceled herein). As will be explained in more detail below, the *Yamaguchi* reference does not disclose each and every feature specified in independent claims 1, 11, 12, and 22, as amended herein.

Applicant has amended each of independent claims 1, 11, and 22 to incorporate a modified version of the features specified in original claim 3, and has amended independent claim 12 to include a modified version of the features specified in original claim 14. In particular, Applicant has amended each of claims 1, 11, 12, and 22 to specify that the judging section (or the corresponding method step or program code) analyzes the image data with a weight distribution that has different magnitudes at the subject position and other positions to calculate an average brightness value in a partial area including the subject position, and executes the backlight decision according to the average brightness value. Support for the

changes made to claims 1, 11, 12, and 22 can be found in Applicant's specification at, for example, Paragraph [0093] and Figure 12. In light of the changes made to claims 1 and 12, Applicant has canceled claims 3 and 14.

The *Yamaguchi* reference discloses a method for determining the amount of exposure. In particular, the *Yamaguchi* reference discloses as follows:

1) "...the back-light information which indicates whether the photographing processing is effected under a back light condition...." (column 21, lines 1-3);

2) "In step 166, a determination is made as to whether the back light information is included in the read photographing information." (column 22, lines 64-66);

3) "When the decision of step 166 is 'YES', in subsequent step 170, the boundary for dividing the density histogram...is determined...in accordance with the kind of the back light information...." (column 22, line 66 to column 23, line 4);

4) "In subsequent step 174, the range from a density value corresponding to the front light or the back light to the boundary is selected as the characteristic range." (column 23, lines 7-9); and

5) "In subsequent step 176, respective average densities of the three colors of R, G, B are calculated by using all of the pixels included in the selected characteristic range, and the calculated average densities are outputted, as a value corresponding to the density of the human image, to the exposure amount calculating circuit 40." (column 23, lines 16-21).

Thus, according to *Yamaguchi*, the characteristic range is set according to *the back light information indicating whether the photographing processing is effected under a back light condition*. The average densities of the three colors of R, G, B are calculated by using all of the pixels included in the selected characteristic range. The average densities are calculated according to the characteristic range (i.e., the back light information). In this way, the average

densities cannot be calculated without the back light information. The average densities are not used for the backlight decision. Therefore, the average densities are significantly different from the average brightness value specified in the presently claimed subject matter. Consequently, the *Yamaguchi* reference necessarily does not disclose (or suggest) the above-discussed features of the presently claimed subject matter. Thus, for at least this reason, the *Yamaguchi* reference does not disclose each and every feature of present claims 1, 11, 12, and 22.

Accordingly, independent claims 1, 11, 12, and 22, as amended herein, are patentable under 35 U.S.C. § 102(b) over *Yamaguchi*.

Rejection Under 35 U.S.C. § 103

Applicant respectfully requests reconsideration of the rejection of claim 23 under 35 U.S.C. § 103(a) as being unpatentable over *Yamaguchi* in view of Official Notice. Applicant has amended independent claim 23 to include a modified version of the features specified in original claim 3. As such, the arguments regarding the *Yamaguchi* reference set forth above with regard to independent claims 1, 11, 12, and 22 also apply to present claim 23. The Official Notice taken by the Examiner merely involves the alleged obviousness of embodying the method taught by *Yamaguchi* on a computer-readable medium. Thus, the Official Notice taken by the Examiner does not cure the deficiencies of the *Yamaguchi* reference relative to the subject matter defined in present claim 23. Accordingly, independent claim 23, as amended herein, is patentable under 35 U.S.C. § 103(a) over *Yamaguchi* in view of Official Notice.

New Claims

As noted above, Applicant has added new claims 24-26. Each of claims 24-26 is an independent claim, and each of claims 24-26 is believed to read on the elected species (Figures 12 and 13). Claim 24 defines an image processing device that includes a judging section and an adjuster. The judging section executes a decision as to whether or not to execute adjustment

processing, based on image data representing a partial area including subject position. In case it is decided to execute the adjustment processing, the adjuster executes processing to increase the brightness value of at least some pixels in the image. Claim 25 defines an image processing method that includes method operations that correspond to the functionality of the image processing device defined in claim 24. Claim 26 defines a computer-readable storage medium encoded with a computer program that causes a computer to implement functionality corresponding to that of the image processing device defined in claim 24.

Claims 24-26 are believed to be patentable under 35 U.S.C. §§ 102 and 103 over the *Yamaguchi* reference. The *Yamaguchi* reference discloses as follows:

- 1) "...the back-light information which indicates whether the photographing processing is effected under a back light condition...." (column 21, lines 1-3);
- 2) "When the back light information is included in the photographing information, the back light information is also read." (column 22, lines 48-50); and
- 3) "...the photographing information recorded on the negative film 10 is read." (column 11, lines 28-29).

Thus, according to *Yamaguchi*, whether or not the photographing processing is effected under a back light condition is judged based on the photographing information recorded on the negative film. In contrast, in the subject matter defined in claims 24-26, the decision is based on the image data. As such, for at least this reason, the *Yamaguchi* reference does not disclose or suggest each and every feature of the subject matter defined in claims 24-26.

Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of claims 1, 11, 12, 22 and 23, as amended herein, and examination of claims 24-26, and submits that these claims are in condition for allowance. Accordingly, a notice of allowance is respectfully requested. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at **(408) 749-6902**. If any additional fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees to Deposit Account No. 50-0805 (Order No. MIPFP057).

Respectfully submitted,
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